IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

State of Rajasthan vs. Mandal Prasad Joshi
(S.B.C.Writ Petition No.2685/2000)

Dated:- 14th July, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Rameshar Dave,Dy.G.A. for the petitioner.
Mr.M.S.Purohit, for the respondent.

This writ petition has been filed by the State of Rajasthan through Secretary, Education Department challenging the order dated 23.10.1999 passed by the Rajasthan Civil Service Appellate Tribunal, Jodhpur (in short “the Tribunal”) .

The respondent no.1 who was working as untrained Teacher resigned from the government service on 24.1.1972 for the purpose of contesting election. Having lost election, he applied for re-employment and thereupon he was again appointed on the minimum of the pay scale vide order dated 7th September,1972. In this order, the appointment of the respondent no.1 has been described as re-employment in relaxation of the prescribed age limit as a special case on the condition that (i) he shall be paid only minimum of the pay scale,(ii) his seniority throughout will be reckoned from the date of fresh

appointment and that (iii) the period of break shall neither be liable to be condoned nor shall be taken into account for the purpose of pension.

The respondent no.1 in his appeal filed in the year 1998 before the Tribunal contended that he has since retired on attaining age of superannuation on 29.02..92. Respondents have granted provisional pension of Rs.1058/- to him which was only 1/3rd of his regular pension . He initially filed a writ petition before this Court being S.B.C.Writ Petition No.4865/94 which was decided vide judgment dated 17.10.1994. The respondent had earlier also filed a civil suit for declaration and permanent injunction against the order passed by the petitioner on 25.10.1986 which was decreed by the Additional Munsif and Judicial Magistrate No.1,Jodhpur on 4.2.1992 directing recovery of paid leaves for the period of break. In that suit, it was contended by him that the government has already condoned break of his service on recommendation of a Committee consisting of three seniors officers. The government passed an order on 27.8.1977 regularizing break in his service and accordingly the District Education Officer by his order dated 27.12.1979 sanctioned his leave of 230 without pay for this period of break. In the civil suit, the respondents contended that he should be granted paid leave for this period because he assumed the charge of the office again on 1.9.1974. He referred to an order passed by the Commissioner of Education Department, Government of Rajasthan dated 28.12.1977 which was addressed to Dy.Director,Jodhpur-Bikaner Range and has been produced before this Court as Annexure 7. In this order, it was written that leave of the respondent for the period from 6.2.1972 to 22.9.1972 should

be sanctioned and that three conditions imposed in the order dated 7.9.1972 should be treated to have been set aside. He also referred to the order dated 17.10.1977 passed by the District Education Officer,Jodhpur whereby on the recommendation of a certain committee, the respondent was made permanent on the post of Assistant Teacher and his pay fixation was made in third pay scale on such post. This suit was decreed in favour of the respondent.

It appears that that the Government filed a revision petition before this Court bearing no. 203/98 wherein an objection was raised that the relief claimed by the respondent in the civil suit could have been granted only by the Tribunal in accordance with the provisions of Rajasthan Civil Services (Appellate Tribunals) Act, 1976 (in short “the Act of 1976”). It was argued that Section 9 of the Act of 1976 barr all suits of civil nature on matter which fall within the scope of Section 2(f) of the said Act. This Court while allowing the revision petition, set aside the judgment dated 17.9.97 passed by the Civil Judge (J.D.) No.5,Jodhpur with a direction for return of the plaint.

The respondent thereafter approached the Service Tribunal. The Tribunal allowed the appeal of the respondent by the impugned order dated 23.10.1999 with a direction to the petitioner-State to pay final pension to the respondent within a period of three months failing which the respondent will be entitled to interest @ 12% per annum. It is against this judgment of the Tribunal that the State has come up in the present writ petition.

Shri Rameshwar Dave,Dy.G.A. for the State argued that earlier the Civil Court and subsequently the Civil Service Appellate Tribunal based their judgment on the order dated 28.12.1977 said to have been passed by the Commissioner, Education Department whereas the respondent no.1 procured this order by practising fraud upon the government .He argued that no such order was ever issued by the Government. The respondent was re-appointed in service and his re-employment was subject to the three conditions enumerated in the order dated 7th September, 1972 which were never waived. According to him, past period of the service rendered by the respondent from the date of his initial appointment till he re-joined consequent upon his re-employment will not be counted for any purpose whatsoever including for the purpose of pension.

On the other hand, Shri M.S.Purohit learned counsel for the respondent argued that the respondent no.1 was re-appointed on the post of untrained teacher as back as in the year 1972 and that he was granted the grade of trained teacher and subsequently his pay fixation on the post of Teacher Gr.III was also made by the order of the District Education Officer on 17.10.1970. He argued that in view of the order of the Educational Commissioner, a Committee of the seniors officers was formed and on the recommendation of such Committee, break of his service between the date of acceptance of resignation till his re-appointment was regularized and by the order of the D.E.O. dated 28.12.1979 leave of 230 days was sanctioned to the respondent. He has

thus rendered more than 38 years of satisfactory service to the petitioner-State and qualified for full pension. He has however been granted only provisional pension to the extent of 2/3rd only of the due. He has argued that the order dated 28.12.1977 was not only hot disputed but was also acted upon by the functionaries of the Government and break in his service was regularized by granting him leave of the kind due. He has therefore prayed that the writ petition filed by the petitioner may be dismissed.

I have considered the arguments advanced by both the learned counsels and carefully gone through the documents on record.

Entire controversy hinges on the fact whether or not the order dated 27.12.1977 issued by the Educational Commissioner on the basis of which period of break in the service of the petitioner intervening the date of acceptance of his resignation and his re-employment was regularized by granting him leave. In the reply to the appeal before the Tribunal, the petitioner sought to justify their stand by stating as under :-

> "The appellant is rightly being given the Provisional pension. However the letter dt.28.12.77 was not in the record of the respondents.However after getting the same examined at high level, it was found that the same had not properly been issued nor the Dy.Director even received this letter because this was addressed to the Dy.Director,Jodhpur.It is the appellant who could manage all these.
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> It is important to mention here that the Dy.Director made necessary official correspondence that such letter was never received by the department or by me."

However, for the first time before the Tribunal learned Government Advocate representing the petitioner argued that the order dated 28.12.1977 was forged. The Tribunal however refused to accept this argument by observing that the government in their reply to appeal has categorically stated that this order was forged. All that has been stated in the said reply is that this order was not available on record. The Tribunal observed that when the leave has been sanctioned to the respondent for period of break, this no longer was an issue in dispute. The Tribunal observed that even in the order dated 24.1.1994 which has been heavily relied upon by the Government this has been stated that the order dated 28.12.1977 was not available on record and that this order has been issued without concurrence of the Finance Department. The learned Tribunal therefore observed on prima facie examination of the order that it would not be proper to describe the order as forged mainly on the basis of its prima facie examination. If at all the said order was forged, it should have been submitted to the hand writing expert for examination but no such steps were taken. Moreover, if the order has been issued without the concurrence of the Finance Department, it was a matter internal to the functioning of the government between Education Department and the Finance Department and should not make any adverse effect on the service of the appellant(respondent no.1) herein particularly, when the leave has already been granted to him. This issue has therefore now become a non-issue.

On examination of the various documents referred to in the

order of the Tribunal including the reply to the appeal, I find that learned Tribunal was perfectly justified in observing that the government did not come out with a categorical plea that the order dated 27.12.1977 was forged one. It was for the first time that during the arguments before the Tribunal, the learned Government Advocate made such an argument and this argument has been repeated even before this Court. Observations of the Tribunal that no steps were taken by the petitioner to get the order in question examined from the hand writing expert to determine whether or not it was forged and therefore, on mere assertion of the petitioner, it cannot be held to be forged. Moreover, once when the government on the basis of the said order referred the matter to the Committee consisting of three senior officers, who recommended it for regularisation of the period of break in service by granting leave to the respondent and such recommendation has been acted upon, it would be too harsh now to permit the petitioner to go on making an inquiry to deny the benefit of pension to the respondent for the period from the year 1954 to 5.2.1972. This is a long spell of 18 years, almost half of the service for which the respondent would otherwise be entitled to receive pension. Already the respondent has been litigating on this issue with the government ever since he retired from service on 29.2.92. From the record it appears that earlier he filed a civil suit which was decreed in his favour. The petitioner challenged the same before this Court and this Court held that civil court had no jurisdiction to entertain the suit and therefore, directed return of the plaint.

On the question of regularisation of the period of break, the

petitioner had filed S.B.C.Writ Petition No.4865/94 which was disposed of by this Court on 17.10.94 with liberty to file a civil suit. He filed an appeal before the Service Tribunal on 19.11.1998 which was decided on 23.10.1999. The petitioner then filed the present writ petition on 4.8.2000 and this Court while issuing notice to the respondent on 8.8.2000, stayed the operation of the judgment of the Tribunal dated 23.10.1999 which was later on confirmed on 6.9.2001. We are now in the mid of the year 2006. The petitioner has now attained the age on 73 years.

In the facts and circumstances of the present case, I do not find any reason to interfere with the order of the Tribunal dated 23.10,.1999 and therefore, the present writ petition is dismissed. In the facts of the present case, it is directed that the petitioner shall make compliance of the order of the Tribunal within a period of three months from the date of receipt of certified copy of this order. The petitioner shall also pay to the respondent a sum of Rs.2,000/- as cost which shall be paid to him along with the arrears of pension etc. in compliance of the order of the Tribunal.

(MOHAMMAD RAFIQ),J.